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22 **UNITED STATES DISTRICT COURT**  
23 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

24 TIMOTHY MILLAR, individually  
25 and on behalf of all others similarly  
26 situated,

27 Plaintiff,

28 vs.

29 EXPRESS TECHNOLOGIES, LTD.,

30 Defendant.

31 8:25-cv-01273-FWS-DFM

32 **DEFENDANT'S NOTICE OF**  
33 **MOTION AND MOTION TO**  
34 **DISMISS THE COMPLAINT**  
35 **UNDER RULE 12(b)(1) & (b)(2)**  
36 **AND, IN THE ALTERNATIVE,**  
37 **TO COMPEL ARBITRATION**

38 Hearing Date: October 23, 2025

39 Time: 10:00 AM

40 Action Filed: June 13, 2025

41 Judge: Hon. Fred W. Slaughter

42 Trial Date: None Set

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1 **NOTICE OF MOTION**

2 TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL  
3 OF RECORD:

4 PLEASE TAKE NOTICE that on October 23, 2025 at 10:00 A.M. PST or at  
5 the next date and time that is available for the Court, Defendant Express Technologies,  
6 Ltd. (“ExpressVPN”) will move this Court to dismiss the Complaint (ECF No. 1) filed  
7 by Plaintiff Timothy Millar for lack of personal and subject matter jurisdiction under  
8 Federal Rule of Civil Procedure 12(b)(1) and (b)(2) or, in the alternative, to compel  
9 arbitration and stay the action. ExpressVPN so moves based on the following  
10 Memorandum of Points and Authorities, the argument of counsel, and any additional  
11 material as may be submitted to and accepted by the Court before its decision.

12 Pursuant to Local Rule 7-3, before making this motion, counsel for the parties  
13 held a pre-motion conference on August 7, 2025. The parties did not resolve the  
14 issues that would have avoided the need for this motion.

15

16 DATED: August 22, 2025 QUINN EMANUEL URQUHART &  
17 SULLIVAN, LLP

18

19 By: /s/ Stephen A. Broome

20 Stephen A. Broome

21 John W. Baumann

22 Laurenne M. Babayan

23 Nicolas G. Keller (*pro hac vice*)

24

25 *Attorneys for Defendant*

26

27

28

## **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff Timothy Millar (“Millar”) brings claims against Defendant Express  
3 Technologies, Ltd. (“ExpressVPN”) under California’s Automatic Renewal Law  
4 (“ARL”), Unfair Competition Law (“UCL”), and False Advertising Law (“FAL”) on  
5 the alleged basis that he did not know he would be charged monthly for virtual private  
6 network (“VPN”) services, despite ExpressVPN’s clear and conspicuous  
7 disclosures—including the disclosures “billed every month” and “billed monthly”  
8 that appear prominently in Millar’s own exhibits—and despite the fact that a VPN is,  
9 by its nature, a service consumers generally use on an ongoing basis. Merits aside,  
10 his claims do not belong in this Court, for several reasons.

11        *First*, the Court lacks personal jurisdiction over ExpressVPN, a foreign  
12 company that is not at home in the State of California. Millar has not—and cannot—  
13 establish that his claims arise out of ExpressVPN’s forum-related activities during the  
14 relevant time period, which were, at most, severely limited in nature. Instead, Millar  
15 voluntarily subscribed to ExpressVPN’s globally available online service, and his  
16 personal jurisdiction theory rests entirely on his own California residency and on an  
17 advertisement that did not exist until long after Millar cancelled his subscription.  
18 Under Ninth Circuit precedent, neither is a basis for personal jurisdiction.

19        **Second**, the Court also lacks subject matter jurisdiction over this dispute  
20 because Millar fails to allege injury in fact and thus lacks standing. Nowhere does  
21 Millar claim that he was deprived of the VPN services he paid for, that he did not  
22 obtain the full benefit of his bargain, or that he otherwise suffered a cognizable injury.  
23 Instead, he points to the ARL’s “unconditional gift” provision as the supposed  
24 statutory basis for such an injury. However, to the extent this “unconditional gift”  
25 provision of the ARL gives rise to an injury at all, it applies only to tangible goods—  
26 not intangible digital services like VPN subscriptions—and is therefore inapplicable.

27        **Third**, the Court lacks equitable jurisdiction. Millar frames his claims as  
28 wholly equitable in nature, but the reality is that he has an adequate remedy at law

1 through the California Consumer Legal Remedies Act (“CLRA”), which provides  
2 damages for the same alleged violations. Millar cannot manufacture equitable  
3 jurisdiction by strategically omitting legal claims.

4 ***Finally***, even if the Court were to find it has personal and subject matter  
5 jurisdiction, Millar agreed to resolve his claims in arbitration, including any threshold  
6 disputes as to arbitrability. Accordingly, to the extent the Court exercises jurisdiction,  
7 it should do so only to compel Millar’s claims to arbitration.

8 **BACKGROUND**

9 This case arises from Millar’s two-month long subscription to ExpressVPN’s  
10 services from September 10, 2022, to November 12, 2022, for which Millar paid  
11 \$12.95 per month. Millar does not allege that, at any point during this time, his VPN  
12 service was interrupted, that he did not use the VPN service, that he submitted any  
13 complaint about the service, or that he was otherwise dissatisfied with the service he  
14 received. Nevertheless, in a lawsuit filed over two-and-a-half years later, Millar  
15 contends that the second of the two \$12.95 payments he made caused him harm and  
16 violated the ARL, UCL, and FAL.

17 **A. ExpressVPN Provides VPN and Privacy Services**

18 ExpressVPN is an established provider of online privacy and security solutions,  
19 including through its flagship VPN subscription service. *See* Declaration of Jack  
20 Buckley ¶ 4 (hereinafter, “Buckley Decl.”). A VPN uses software to encrypt users’  
21 internet connections and provide a secure tunnel between users’ devices and the  
22 internet. *Id.* ¶ 5. Often used by employers and organizations to enable remote  
23 employees to securely access institutional networks, VPNs are also available to  
24 individuals for their everyday internet browsing. *Id.* ¶ 8. ExpressVPN’s VPN service  
25 is available entirely online and without the need for any hardware or other tangible  
26 product. *Id.* ¶ 9. ExpressVPN is dedicated to privacy and digital security, having  
27 launched initiatives like the ExpressVPN Rights Center. *Id.* at ¶ 7. ExpressVPN’s  
28 VPN service is also routinely audited for compliance with strict security and privacy

1 standards. *Id.* ¶ 6. ExpressVPN is a British Virgin Islands (“BVI”) company. *Id.* ¶ 3;  
2 Compl. at ¶ 7.

3 **B. Millar Subscribed to ExpressVPN for Two Months in 2022**

4 1. Millar Subscribed to ExpressVPN in September 2022

5 On September 10, 2022, Millar signed up for a monthly subscription to the  
6 ExpressVPN service and paid the monthly fee of \$12.95 for his first month. Compl.  
7 ¶¶ 4, 34. In doing so, Millar clicked through the ExpressVPN sign-up and checkout  
8 page, which was split into “3 easy steps.” *Id.* ¶ 24. At “Step 1,” the page invited  
9 visitors to “Select a plan that works for you” from three different subscription “VPN  
10 plans,” with those subscriptions described as follows: (i) “1 Month . . . \$12.95 per  
11 month . . . Billed every month;” (ii) “12 Months + 3 Months FREE . . . \$6.67 per  
12 month . . . Billed once for 15 months (including 3 free months), then every 12  
13 months;” and (iii) “6 Months . . . \$9.99 per month . . . Billed every 6 months.” *Id.*  
14 ¶¶ 24-25 & Ex. 2. At “Step 2,” a user would enter their email address. *Id.* ¶ 26 & Ex.  
15 2. And at “Step 3,” entitled “Select your preferred method of payment,” the  
16 subscription nature of the VPN service was described once again right above the “Join  
17 Now” button, with language specific to the plan chosen by the user at Step 1. *Id.* For  
18 example, for the month-to-month plan Millar chose, the notice stated, “ExpressVPN  
19 1-month plan, billed monthly (\$12.95/month).” *Id.* ¶¶ 26-27. This text was in black  
20 font against a white background, which provides the maximum possible contrast ratio  
21 between any two colors. The above-described format and content of the ExpressVPN  
22 checkout process made no reference to California.

23 Millar completed all three of the above-described steps—and thus saw the  
24 numerous disclosures at Step 1 and Step 3 that his selected subscription would renew  
25 monthly—clicked the “Join Now” button, and then received a confirmation email  
26 stating, in relevant part, “PRICE 12.95 USD billed monthly.” *Id.* ¶ 31 & Ex. 3.  
27 Despite the repeated and clearly legible statements regarding the monthly billing  
28 cadence of his selected subscription during the purchase and post-purchase stages,

1 Millar alleges that somehow the recurring nature of the VPN subscription was  
2 “[u]nbeknownst to him.” *Id.* ¶ 4; *see also id.* ¶¶ 31, 34, 36.

3 Millar argues that ExpressVPN’s stylistic choices of font colors and sizes are  
4 to blame, *id.* ¶¶ 25, 27, but his characterizations are contradicted by the snapshot of  
5 the checkout flow appended to his Complaint, which is in normal resolution—unlike  
6 the degraded excerpts that he pasted into his Complaint. *Compare id.*, Ex. 2, and  
7 Buckley Decl., Ex. 1 (Sept. 10, 2022),<sup>1</sup> *with Compl.* ¶¶ 24, 26. For instance, the font  
8 of the text “per month,” “Billed every month,” “Billed once for 15 months (including  
9 3 free months), then every 12 months,” “Billed every 6 months,” and “ExpressVPN  
10 1-month plan, billed monthly (\$12.95/month)” was no smaller than other important  
11 notices on the webpage, including “30-day money-back guarantee,” “All amounts  
12 shown are in USD,” and “Privacy guarantee: We do not share your information and  
13 will contact you only as needed to provide our service,” *id.*, Ex. 2—none of which  
14 Millar complains or asserts were obscured, even though they were the same size.

15 Millar’s allegation that, in “Step 3,” the words “billed monthly” (part of the  
16 phrase “ExpressVPN 1-month plan, billed monthly (\$12.95/month)”) are in “faded  
17 grey text,” *id.* ¶ 27, is similarly inaccurate, as that text is clearly black when viewed  
18 in normal resolution. *Id.*, Ex. 2; *see also* Buckley Decl., Ex. 1. In any event, as to the  
19 language Millar complains of that is actually grey, such “grey text” was used  
20 abundantly throughout the page. *See Compl.* ¶¶ 24-27. This includes the grey text  
21 used for key data entry fields (e.g., “Your email address,” “First Name,” “Last Name,”  
22 “Card Number”) and even for emphasizing that one discounted rate was a significant  
23 drop from the usual price, which for comparison was in grey and crossed out (*i.e.*,  
24

25  
26 <sup>1</sup> *See Stewart v. Screen Gems-EMI Music, Inc.*, 81 F. Supp. 3d 938, 951 (N.D. Cal.  
27 2015) (“When adjudicating a motion to dismiss brought pursuant to Federal Rule of  
28 Civil Procedure 12(b)(2), a court may consider extrinsic evidence—that is, materials  
outside of the pleadings, including affidavits submitted by the parties.”).

1 “\$12.95”), *id.*, Ex. 2; Buckley Decl., Ex. 1, belying the suggestion that ExpressVPN’s  
2 use of grey text was intended to obscure.

3                   2.     Millar’s Subscription Renewed Once in October 2022

4                   One month after Millar signed up, on October 10, 2022, he was charged the  
5 renewal fee of \$12.95 for his second month of service, consistent with the numerous  
6 above-described notifications that the subscription would be billed on a monthly  
7 basis. Compl. ¶ 35. On October 22, 2022, Millar allegedly “cancelled the service so  
8 he would not be charged again.” *Id.* Millar does not allege any difficulty in cancelling  
9 his subscription, and he does not claim to have sought any customer service support  
10 or refunds. *See id.* ¶¶ 34-37.

11                  Millar claims that “[i]f ExpressVPN had complied with the ARL and made  
12 clear that it was going to automatically charge Mr. Millar in this way, he would not  
13 have signed up in the first place or would have cancelled before he was automatically  
14 charged.” *Id.* ¶ 36. Although Millar’s only alleged injury is the \$12.95 he paid for  
15 the second month, he conclusorily asserts that he “has no adequate remedy at law”  
16 and that “[t]he equitable claims asserted (the UCL and FAL) offer relief, including  
17 restitution, that is more prompt, certain, and efficient than legal damages.” *Id.* ¶ 37.  
18 He does not explain why.

19                  C.     The ExpressVPN Advertisements Millar Allegedly Relied on Did  
20                   Not Exist When He Signed Up

21                  Millar argues the “Court has personal jurisdiction over ExpressVPN because it  
22 both purposefully avails itself of California and purposefully directs its activities here.  
23 ExpressVPN exploits the California market, to enter contracts with California  
24 consumers.” *Id.* ¶¶ 9-10. Millar points to two categories of purported evidence to  
25 support this assertion. First, Millar describes a Google keyword ad for ExpressVPN  
26 that appeared on Google Search when he (or his counsel) recently searched for the  
27 words “ExpressVPN” and “California.” *Id.* ¶ 10. Millar also describes the  
28 corresponding ExpressVPN webpage that appears when the Google advertisement is

1 clicked. *Id.* ¶¶ 11-12. Millar omits, however, that *these ads did not exist* when Millar  
2 signed up in September 2022. Buckley Decl. ¶ 19.

3 Second, Millar alleges that, “[t]o service the California businesses it solicits,  
4 ExpressVPN controls physical servers located in California (in Los Angeles, San  
5 Francisco, and Santa Monica). For these servers, ExpressVPN’s related contracts  
6 would be centered in California (the location of the server).” Compl. ¶ 13. Millar  
7 appears to be referring to the servers that host VPN services (“VPN Servers”).  
8 However, Millar does not allege that his claims arise out of ExpressVPN’s contracts  
9 for VPN Servers, the location of the VPN Servers, or any issues relating to the VPN  
10 Servers. Rather, he complains about ExpressVPN’s websites which were hosted by  
11 separate servers (the “Website Servers”), the location of which was determined not  
12 by ExpressVPN but rather “by the third-party webhosting service provider hired by  
13 ExpressVPN to host the websites such that they are accessible globally.” Buckley  
14 Decl. ¶ 18.

15 **D. The Operative ExpressVPN Terms of Service Require Binding**  
16 **Arbitration and Delegate the Question of Arbitrability**

17 On Millar’s sign-up and checkout page, the following notice appeared directly  
18 below the “Join Now” button: “By submitting this form, you agree to our Terms of  
19 Service.” Buckley Decl., Ex. 1; *see also* Compl., Ex. 2 (Dec. 1, 2022). This sentence  
20 appeared in black font against a white background (which, as aforementioned, has the  
21 highest possible contrast ratio between two colors), with ample whitespace setting it  
22 apart from all other text. And within the sentence, the words “Terms of Service” were  
23 hyperlinked, green in color, and starkly underlined. Buckley Decl., Ex. 1; *see also*  
24 Compl., Ex. 2. The Terms of Service (“TOS”), available in September 2022 at the  
25 hyperlinks [www.expressvpn.com/tos](http://www.expressvpn.com/tos) and [www.express-vpn.com/tos](http://www.express-vpn.com/tos), described both  
26 the automatic renewal terms and the applicable dispute resolution provisions—  
27 including an arbitration agreement. Buckley Decl. ¶ 14 & Ex. 2 (Sept. 10, 2022).

1           1.     TOS Automatic Renewal Terms

2           Section 4 of the TOS, titled “Subscriptions,” complemented the offer-selection  
3 and checkout notices by stating that “[w]hen supported by your payment method,  
4 plans renew automatically by default at the completion of the billing term;” that “[b]y  
5 default, the renewal term is for the same duration as the billing term for the original  
6 subscription;” that “[t]he subscription fee will be charged automatically to the  
7 payment method you last selected;” that “to discontinue automatic renewal  
8 [customers] may sign in to the Site and turn off auto-renewal or email us at  
9 [support@expressvpn.com](mailto:support@expressvpn.com);” and that “by default, auto-renewal is turned on when  
10 [customers] use a payment method that supports auto-renewal (such as a credit card  
11 or Paypal [sic]), and turned off when [customers] use a payment method that does not  
12 support auto-renewal (such as Bitcoin).” *Id.*, Ex. 2 § 4. Additionally, the TOS stated  
13 that “ExpressVPN reserves the right to amend subscription fees or institute new fees  
14 at any time upon reasonable advance notice posted on the Site or sent via email. Any  
15 changes to the pricing will not affect the Subscriber’s current subscription period and  
16 will become effective upon subscription renewal.” *Id.*

17           2.     TOS Mandatory Binding Arbitration

18           Section 15 of the TOS, titled “Arbitration,” contains an arbitration agreement,  
19 requiring that “[a]ll disputes arising out of or relating to this Agreement or the use of  
20 the Site or Services shall be finally settled under the Rules of Arbitration (‘Rules’) of  
21 the International Centre for Dispute Resolution (ICDR) by one arbitrator  
22 (‘Arbitrator’) appointed in accordance with said Rules.” *Id.*, Ex. 2 § 15. The ICDR  
23 is the global division of the American Arbitration Association (“AAA”), and, as such,  
24 the two arbitral forums (collectively known as “AAA-ICDR”) share substantially the  
25 same rules and procedures. This includes a jurisdictional provision that delegates  
26 arbitrability disputes directly to the arbitrator. *See AAA, Consumer Arbitration*  
27 *Rules, R-14(a), [www.adr.org/media/tiifv2ft/consumer\\_rules\\_web.pdf](http://www.adr.org/media/tiifv2ft/consumer_rules_web.pdf)* (Sept. 1, 2014)  
28 (“The arbitrator shall have the power to rule on his or her own jurisdiction, including

1 any objections with respect to the existence, scope, or validity of the arbitration  
2 agreement or to the arbitrability of any claim or counterclaim.”); ICDR, *International*  
3 *Dispute Resolution Procedures*, Art. 21(1), [www.icdr.org/sites/default/files/  
4 document\\_repository/ICDR\\_Rules\\_1.pdf](http://www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf) (“The arbitral tribunal shall have the power  
5 to rule on its own jurisdiction, including any objections with respect to arbitrability,  
6 to the existence, scope, or validity of the arbitration agreement(s), . . . without any  
7 need to refer such matters first to a court.”).

8 **LEGAL STANDARD**

9 **Personal Jurisdiction.** When no federal statute governs personal jurisdiction,  
10 courts apply forum state law. *See Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th  
11 Cir. 2008). California exercises personal jurisdiction coextensive with federal due  
12 process standards. *See Pavlovich v. Superior Court*, 29 Cal. 4th 262, 268 (2002)  
13 (“California courts may exercise personal jurisdiction on any basis consistent with the  
14 Constitutions of California and the United States.” (citing Cal. Civ. Proc. Code §  
15 410.10)). A plaintiff bears the burden of demonstrating that his or her allegations  
16 would establish a *prima facie* case for personal jurisdiction. *See Boschetto*, 539 F.3d  
17 at 1015.

18 **Article III Standing.** To establish standing under the U.S. Constitution, a  
19 plaintiff must prove an “injury in fact” that is causally linked to the conduct  
20 complained of and would be redressed by a decision in plaintiff’s favor. *See Lujan v.*  
21 *Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). “[B]are procedural violation[s],  
22 divorced from any concrete harm . . . do[] not suffice for Article III standing.”  
23 *TransUnion LLC v. Ramirez*, 594 U.S. 413, 440 (2021) (citing *Spokeo, Inc. v. Robins*,  
24 578 U.S. 330, 341 (2016)). The plaintiff bears the burden to prove subject matter  
25 jurisdiction exists. *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 230-31 (1990).

26 **Arbitration.** The Federal Arbitration Act (“FAA”) applies where, as here, the  
27 arbitration agreement appears in a contract involving interstate commerce. 9 U.S.C.  
28 § 1; *cf. Compl. ¶¶ 11, 13 & Ex. 1* (at some unspecified point in time, “ExpressVPN

1 control[led] physical servers located in California (in Los Angeles, San Francisco,  
2 and Santa Monica)" but also "24 U.S. server locations" and in "105 Countries  
3 worldwide"). "The Arbitration Act establishes that, as a matter of federal law, any  
4 doubts concerning the scope of arbitrable issues should be resolved in favor of  
5 arbitration[.]" *Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.*, 460 U.S. 1,  
6 24-25 (1983). If a claim is subject to arbitration, a court lacks authority to address the  
7 merits of that claim. *See Prima Paint Corp. v. Flood & Conklin Mfr. Co.*, 388 U.S.  
8 395, 400 (1967). Under Section 3 of the FAA, a court must stay the case until the  
9 arbitration has concluded. 9 U.S.C. § 3.

10 **ARGUMENT**

11 **I. THE COURT SHOULD DISMISS FOR LACK OF JURISDICTION**

12 **A. The Court Lacks Personal Jurisdiction Over ExpressVPN**

13 ExpressVPN is a BVI company that offers its services around the world.  
14 Buckley Decl. ¶¶ 3-4. It has no offices in the United States. *Id.* ¶ 3. To exercise  
15 specific personal jurisdiction over a non-resident defendant like ExpressVPN, the  
16 Ninth circuit applies a three-prong test: "(1) The non-resident defendant must  
17 purposefully direct his activities or consummate some transaction with the forum or  
18 resident thereof; or perform some act by which he purposefully avails himself of the  
19 privilege of conducting activities in the forum, thereby invoking the benefits and  
20 protections of its laws; (2) the claim must be one which arises out of or relates to the  
21 defendant's forum-related activities; and (3) the exercise of jurisdiction must comport  
22 with fair play and substantial justice, *i.e.* it must be reasonable." *Schwarzenegger v.*  
23 *Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (cleaned up).

24 "The plaintiff bears the burden of satisfying the first two prongs of the test. If  
25 the plaintiff fails to satisfy either of these prongs, personal jurisdiction is not  
26 established in the forum state. If the plaintiff succeeds . . . the burden then shifts to  
27 the defendant to 'present a compelling case' that the exercise of jurisdiction would  
28 not be reasonable." *Id.* (citations omitted). "[M]ere injury to a forum resident is not

1 a sufficient connection to the forum. Regardless of where a plaintiff lives or works,  
2 an injury is jurisdictionally relevant only insofar as it shows that the defendant has  
3 formed a contact with the forum State. The proper question is not where the plaintiff  
4 experienced a particular injury or effect but whether the defendant’s conduct connects  
5 him to the forum in a meaningful way.” *Walden v. Fiore*, 571 U.S. 277, 290 (2014);  
6 *see Doe v. Call-On Doc*, 2025 WL 1677632, at \*5 (S.D. Cal. June 13, 2025) (“A court  
7 must look ‘to the defendant’s contacts with the forum State itself, not the defendant’s  
8 contacts with persons who reside there.’” (citing *Walden* post-*Briskin*)).

9 For a court to exercise specific personal jurisdiction over a defendant, the  
10 requisite contacts with the forum under the three-prong test must have existed at the  
11 time the alleged violations occurred—here, September and October 2022. *See Steel*  
12 *v. United States*, 813 F.2d 1545, 1549 (9th Cir. 1987) (“When a court is exercising  
13 specific jurisdiction over a defendant, ‘arising out of or related to the defendant’s  
14 contacts with the forum,’ the fair warning that due process requires arises not at the  
15 time of the suit, but when the events that gave rise to the suit occurred.” (citation  
16 omitted)); *Rose Day LLC v. Women of Tomorrow Mentor*, 2025 WL 1039555, at \*8  
17 (C.D. Cal. Mar. 3, 2025) (“[T]he personal jurisdiction analysis . . . requires defendant  
18 to have already established contacts with the forum at the time of the relevant  
19 events.”).

20 1. ExpressVPN Did Not Purposefully Direct the Suit-Related  
21 Conduct at California

22 The *Calder* three-part “effects” test—drawn from the Supreme Court’s  
23 decision *Calder v. Jones*, 465 U.S. 783 (1984)—governs the assessment of  
24 “purposeful direction.” *Schwarzenegger*, 374 F.3d at 805. Under that test, a plaintiff  
25 must establish the defendant “(1) committed an intentional act, (2) expressly aimed at  
26 the forum state, [and] (3) causing harm that the defendant knows is likely to be  
27 suffered in the forum state.” *Id.* A plaintiff’s assertion of having “suffer[ed] an injury  
28 in the forum state alone is insufficient to demonstrate purposeful direction.” *Moody*

1 *v. Textron Inc.*, 2025 WL 2025597 at \*4 (C.D. Cal. July 2, 2025) (cleaned up). Millar  
2 has not and cannot make the required *Calder* showings, particularly on the second  
3 and third parts.

4 Millar relies heavily on ExpressVPN’s purported advertising aimed at  
5 California. Compl. ¶¶ 10-12. But, even putting aside that it is **Millar (or his counsel)**  
6 who sought out California-related advertising by searching Google for “ExpressVPN  
7 California,” the ExpressVPN webpage regarding California servers to which this  
8 search led simply did not exist in September or October 2022. Buckley Decl. ¶ 19.  
9 As a necessary consequence, these advertisements cannot have been “expressly aimed  
10 at the forum state” at the time, thereby failing the second part of the *Calder* test. *See,*  
11 *e.g.*, *Rose Day LLC*, 2025 WL 1039555 at \*8 (requiring “contacts with the forum **at**  
12 **the time of the relevant events**” (emphasis added)).

13 The only other conduct Millar identifies that could conceivably have been  
14 “expressly aimed at the forum state” is that ExpressVPN used VPN Servers located  
15 in California at the time. Compl. ¶ 13. But, Millar does not contend that his alleged  
16 harm has anything to do with the location of the VPN Servers (which are located  
17 around the world), thereby failing the third part of the *Calder* test. The mere presence  
18 of VPN Servers in California does not tie ExpressVPN’s conduct to Millar’s claims,  
19 particularly where those California VPN Servers were available on a worldwide basis  
20 and were, in any event, separate from the Website Servers which host the ExpressVPN  
21 customer signup webpages that Millar challenges. *See* Buckley Decl. ¶ 16 (“In  
22 September 2022, ExpressVPN offered global access to VPN servers in 94 countries,  
23 meaning that, should they so choose, non-California subscribers anywhere in the  
24 world could use California servers with California IP addresses, and California  
25 subscribers could use non-California servers with non-California IP addresses.  
26 ExpressVPN does not control a subscriber’s decision to select a particular server or  
27 location.”); *id.* ¶ 18. In sum, as of September and October 2022, ExpressVPN did not

<sup>1</sup> “purposefully direct[] . . . [wrongful] conduct toward California.” *Briskin v. Shopify*, 135 F.4th 739, 755 (9th Cir. 2025).

3        The Ninth Circuit’s recent *en banc* decision in *Briskin v. Shopify* does not  
4 dictate a contrary conclusion. *Id.* In that case, plaintiff Briskin had purchased a  
5 product from an online retailer. *Id.* at 747. Unbeknownst to Briskin, the retailer used  
6 defendant Shopify’s payment checkout service. *Id.* Shopify allegedly used this  
7 access, “while knowing that the device Briskin was using to shop was located in  
8 California,” to affirmatively reach into that device to “surreptitiously implant[]  
9 cookies that permanently remained on Briskin’s device, tracked its physical location,  
10 and collected data regarding Briskin’s online shopping activity.” *Id.* at 746. Briskin  
11 also alleged that “Shopify used the resulting data to compile a consumer profile that  
12 Shopify marketed widely, including to many California merchants.” *Id.* Briskin had  
13 no opportunity to consent to or opt out of Shopify’s data collection, had not sought  
14 out Shopify, and had no reason to know or suspect that his decision to interact with  
15 the retailer’s website would result in Shopify’s permanent data mining cookies being  
16 installed on his device, allegedly in violation of data privacy laws. *Id.* at 746-49.  
17 Accordingly, the nexus between Shopify’s conduct and Briskin’s claims was clear—  
18 it was **Shopify’s** conduct (installing trackers without consent on devices within  
19 California) that gave rise to Briskin’s data privacy claims. Under those highly specific  
20 circumstances, the Ninth Circuit found that specific personal jurisdiction over Shopify  
21 existed. *Id.* at 762. In contrast, none of these *Briskin* factors are present here, where  
22 Millar simply went online to obtain VPN services from a foreign company that  
23 provides services globally pursuant to TOS governed by BVI law.

24                   2. Millar's Claims Do Not Arise Out of ExpressVPN's Forum  
25                   Contacts

26 The second prong of the specific personal jurisdiction test requires that Millar's  
27 claims "arise[] out of or relate[] to the defendant's forum-related activities."  
28 *Schwarzenegger*, 374 F.3d at 802. This requirement ensures that the forum-related

1 contacts are not only purposeful, but also meaningfully connected to the claims at  
2 issue. *Id.* at 803-05.

3 Millar cannot satisfy this prong. He alleges no facts indicating that  
4 ExpressVPN's conduct targeted him—or anyone—in California in September 2022.  
5 *See Call-On Doc, Inc.*, 2025 WL 1677632, at \*7 (granting motion to dismiss for lack  
6 of specific personal jurisdiction where the plaintiff failed to plausibly allege  
7 defendant's contacts with California). Rather, it is **Millar** who affirmatively sought  
8 out and obtained the ExpressVPN subscription services. *See* Compl. ¶ 34. But  
9 Millar's conduct cannot give rise to personal jurisdiction over ExpressVPN; only  
10 ExpressVPN's own conduct can create personal jurisdiction. *See Walden*, 571 U.S.  
11 at 285 (“[T]he plaintiff cannot be the only link between the defendant and the  
12 forum.”); *Heiting v. Marriott Int'l, Inc.*, 743 F. Supp. 3d 1163, 1170 (C.D. Cal. 2024)  
13 (“[I]t is the defendant's contacts with the forum that are relevant” to specific  
14 jurisdiction analysis (citing *Walden*, 571 U.S. at 284)). And, as shown above, Millar's  
15 claims do not arise out of or relate to ExpressVPN's limited contacts with California  
16 as of September and October 2022—namely, the alleged “control” of VPN Servers  
17 within the State. *See* Compl. ¶¶ 11, 13.

18                   3.     Exercising Personal Jurisdiction Would Be Unreasonable and  
19                   Offend Traditional Notions of Fair Play and Substantial Justice

20                   Even if Millar could satisfy the first two prongs of the specific personal  
21 jurisdiction analysis (which he cannot), exercising personal jurisdiction over  
22 ExpressVPN would be unreasonable and offend traditional notions of fair play and  
23 substantial justice. Courts apply a seven-factor balancing test to assess  
24 reasonableness: “(1) the extent of the defendant's purposeful interjection into the  
25 forum state's affairs; (2) the burden on the defendant of defending in the forum; (3)  
26 the extent of conflict with the sovereignty of the defendant's state; (4) the forum  
27 state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of  
28 the controversy; (6) the importance of the forum to the plaintiff's interest in

1 convenient and effective relief; and (7) the existence of an alternative forum.”  
2 *Briskin*, 135 F.4th at 761. Because Millar fails to adequately allege that ExpressVPN  
3 purposefully directed its conduct to California or that his claims arise out of  
4 ExpressVPN’s alleged California contacts, his contract is not governed by California  
5 law, and because he agreed to resolve his claims elsewhere, it would be unreasonable  
6 and offend traditional notions of fair play and substantial justice to exercise personal  
7 jurisdiction over ExpressVPN.

8 **B. The Court Lacks Subject Matter Jurisdiction**

9 “[T]he core component of standing is an essential and unchanging part of the  
10 case-or-controversy requirement of Article III,” without which a court lacks subject  
11 matter jurisdiction. *Lujan*, 504 U.S. at 560; *see Alexander v. Kujok*, 158 F. Supp. 3d  
12 1012, 1017 (E.D. Cal. 2016) (“Where a plaintiff lacks standing to bring a claim, courts  
13 lack jurisdiction to hear that claim, and a motion to dismiss under Rule 12(b)(1) is  
14 appropriate.”). In addition to the injury in fact requirement under Article III of the  
15 U.S. Constitution, the laws Millar invokes (the UCL and FAL) also impose their own  
16 statutory standing requirements. Cal. Bus. & Prof. Code § 17204 (UCL) (“Actions  
17 for relief pursuant to this chapter shall be prosecuted exclusively . . . by a person who  
18 has suffered injury in fact and has lost money or property as a result of the unfair  
19 competition.”); *see also id.* § 17535 (FAL) (applying the same standard for false  
20 advertising claims).

21 The Court lacks subject matter jurisdiction over this dispute because Millar  
22 fails to allege injury in fact or that he “lost money or property” within the statutory  
23 meaning. *See Roz v. Nestle Waters N. Am., Inc.*, 2017 WL 132853, at \*6 (C.D. Cal.  
24 Jan. 11, 2017) (“To proceed with their UCL and FAL claims, . . . 1) the Plaintiffs  
25 must have suffered an injury-in-fact; and 2) the Plaintiffs must have lost money or  
26 property as a result of unfair competition.”). Millar’s theory of standing rests on the  
27 premise that he was charged for a second month of ExpressVPN’s services without  
28 consent, in violation of the ARL. Compl. ¶¶ 34-36. But Millar does not suggest that

1 ExpressVPN failed to provide the services for which he paid. *See id.* ¶ 35. He does  
2 not allege that the services he received were deficient, or that they were worth less  
3 than what he paid. Nor does he allege that he attempted to use the service but was  
4 denied access, or even that he did not use the second month of service. In short, Millar  
5 received precisely what he paid for—two months of VPN services—and thus obtained  
6 the benefit of his bargain. *See Roz*, 2017 WL 132853, at \*7 (“[P]aying money for a  
7 product, while technically a ‘loss’ of that money, does not necessarily qualify as an  
8 injury. The money has changed hands, but the payer has received something of equal  
9 or greater value. Therefore, not all payments are injuries, and not all induced  
10 payments satisfy the ‘lost money or property’ prong of the UCL and FAL.”). That  
11 Millar later decided he would not have made the purchase had he read the disclosures  
12 he was shown does not transform a completed and undisputed exchange of value into  
13 a cognizable injury in fact or economic loss under California law. *See generally*  
14 *Warner v. Tinder Inc.*, 105 F. Supp. 3d 1083, 1094 (C.D. Cal. 2015) (“[B]eing induced  
15 to purchase a product one would not otherwise have purchased is not loss of money  
16 or property within the meaning of the statute as long as one still receives the benefit  
17 of the bargain.”).

18 Millar’s attempt to invoke the ARL’s “unconditional gift” provision to cure this  
19 defect is unavailing. *See Compl.* ¶ 23 (“So if a company charges a consumer for an  
20 automatically renewing subscription, in violation of the ARL, the charges are illegal  
21 and must be refunded.”). The relevant provision states that, “[A]ny **goods, wares,**  
22 **merchandise, or products** [sent] to a consumer, under a[n] . . . automatic renewal of  
23 a purchase, without first obtaining the consumer’s affirmative consent . . . shall for all  
24 purposes be deemed an unconditional gift to the consumer, who may use or dispose  
25 of the same . . . without any obligation whatsoever.” Cal. Bus. & Prof. Code § 17603  
26 (emphasis added). There is a split of authority regarding whether the “unconditional  
27

28

1 “gift” provision can confer the constitutional or statutory injury required for standing,  
2 with the more compelling opinions holding that it cannot.<sup>2</sup>

3       But, critically, even assuming *arguendo* that the “unconditional gift” provision  
4 in the ARL could confer standing under certain circumstances, it applies only where  
5 a defendant delivers ***tangible goods*** to a consumer in violation of the statute. *Johnson*  
6 *v. Pluralsight, LLC*, 236 F. Supp. 3d 1176, 1183 (E.D. Cal. 2017) (§ 17603 “applies  
7 only to tangible products that are shipped to a consumer, and not to intangible  
8 services.”), *aff’d in part, rev’d in part on other grounds*, 728 F. App’x 674 (9th Cir.  
9 2018); *see McKee v. Audible, Inc.*, 2018 WL 11263238, at \*18, n. 15 (C.D. Cal. Mar.  
10 12, 2018) (“*Roz* involved shipments of water and thus, unlike the present case[,]  
11 resolved the standing issue based on the unconditional gifts provision in § 17603,  
12 which might not apply to [Audible Credits].”). Because what Millar purchased from  
13 ExpressVPN is a subscription for online services, the “unconditional gift” provision  
14 simply does not apply. *See Mayron v. Google, Inc.*, 2016 WL 1059373, at \*3 (Cal.  
15 Super. Feb. 26, 2016) (Whereas “a consumer could keep a good or product that is sent  
16 in violation of the [ARL], . . . there is nothing to keep when it is only a service that is  
17 provided.”), *aff’d*, 54 Cal. App. 5th 566. Therefore, Millar cannot invoke it as a means  
18 of circumventing constitutional or statutory standing requirements.

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<sup>2</sup> Compare *Roz*, 2017 WL 132853, at \*7 (“When the [d]efendant then collected  
21 money in return for that ‘gift,’ it injured the Plaintiffs because it took money that the  
22 Plaintiffs did not owe. Therefore, the charges must qualify as an injury.”), *with*  
23 *Mayron v. Google LLC*, 54 Cal. App. 5th 566, 576 (Ct. App. 6th Dist. 2020) (“The  
24 *Roz* court’s analysis ignores the requirement that the consumer’s injury must be caused  
25 by . . . the defendant’s failure to provide the required disclosures. Lack of a causal  
26 link between the underlying statutory violation and the nature of the plaintiff’s loss  
27 precludes standing.”), *and Zeller v. Optavia, LLC*, 2022 WL 17858032, at \*9 (S.D.  
28 Cal. Dec. 22, 2022) (“[T]he ARL’s unconditional gift provision does not  
independently confer standing . . . as the consumer’s injury must be . . . caused by the  
defendant’s failure to provide the required disclosures.”); *see also TransUnion LLC*,  
594 U.S. at 440 (“[B]are procedural violation[s] . . . do[] not suffice for . . . standing.”).

1                   C.    The Court Also Lacks Equitable Jurisdiction

2                   “In order to entertain a request for equitable relief, a district court must have  
3 equitable jurisdiction, which can only exist under federal common law if the plaintiff  
4 has no adequate legal remedy.” *Guzman v. Polaris Indus. Inc.*, 49 F.4th 1308, 1313  
5 (9th Cir. 2022); *see also Regueiro v. FCA US, LLC*, 671 F. Supp. 3d 1085, 1099 (C.D.  
6 Cal. 2023). Accordingly, as the Ninth Circuit held in *Sonner v. Premier Nutrition*  
7 *Corp.*, equitable restitution is unavailable when a plaintiff seeks the same monetary  
8 relief through equity that is available through a legal damages claim, particularly  
9 where that relief would constitute “the same amount of money for the exact same  
10 harm” measured by the same metric, such as “a full refund of the purchase price.”  
11 971 F.3d 834, 844 (9th Cir. 2020).

12                  But that is exactly what Millar seeks here, given he plainly has an adequate  
13 remedy at law (*i.e.*, damages of \$12.95 for the second month charge). As courts have  
14 recognized time and again, “violations of the ARL are actionable under CLRA  
15 subdivisions (a)(5) and (a)(9).” *Zeller v. Optavia LLC*, 2024 WL 1207461 at \*6 (S.D.  
16 Cal. Mar. 14, 2024); *see* Cal. Civ. Code § 1770. Where, as here, a plaintiff “may  
17 pursue a CLRA damages claim seeking a full refund,” there is “an adequate remedy  
18 at law,” which precludes equitable jurisdiction. *Id.* at \*10. The same principle applies  
19 here. Millar cannot manufacture equitable jurisdiction by voluntarily declining to  
20 plead a CLRA claim, because his decision to do so does not establish the inadequacy  
21 of that legal remedy. *See, e.g., Sonner*, 971 F.3d at 845 (plaintiff’s “strategic[]  
22 cho[ice] to amend her complaint on the eve of trial to drop her [CLRA] damages  
23 claim” did not establish inadequacy of legal remedies allowing her to pursue UCL  
24 claim); *Nacarino v. Chobani, LLC*, 668 F. Supp. 3d 881, 895-96 (N.D. Cal. Feb. 4,  
25 2022) (“*Sonner* teaches that a plaintiff . . . cannot create an inadequacy of a legal  
26 remedy by eliminating its availability by taking volitional action.”).

27                  Millar conclusorily asserts that he “has no adequate remedy at law” because the  
28 equitable claims purportedly “offer relief, including restitution, that is more prompt,

1 certain, and efficient than legal damages.” Compl. ¶ 37. He does not explain why—  
2 because there is no logical explanation. Indeed, to the extent he has alleged harm at  
3 all—he has not—it is in the form of the \$12.95 he was charged for his second month  
4 of VPN services. Compl. ¶ 4. It is difficult, if not impossible, to conceive how legal  
5 damages would not be sufficient to compensate Millar for this alleged monetary  
6 injury.

7 Because all of Millar’s claims are equitable in nature, and because the Court  
8 cannot grant equitable relief where legal relief is available, the Court lacks equitable  
9 jurisdiction in this case.

10 **II. IN THE ALTERNATIVE, THE COURT SHOULD COMPEL  
11 ARBITRATION**

12 If the Court concludes it has jurisdiction over this matter, it should compel  
13 arbitration in accordance with the parties’ agreement to arbitrate. *See Geographic  
14 Expeditions, Inc. v. Est. of Lhotka ex rel. Lhotka*, 599 F.3d 1102, 1106 (9th Cir. 2010)  
15 (“[A] federal court has jurisdiction over a petition to compel arbitration if the federal  
16 court would have jurisdiction over the underlying substantive dispute.”).

17 **A. Millar Agreed to Arbitrate His Claims**

18 At the time he subscribed for ExpressVPN’s service, ExpressVPN provided  
19 clear, conspicuous notice that doing so required Millar to agree to ExpressVPN’s  
20 TOS, and Millar affirmatively clicked the action button signifying his assent to the  
21 agreement, including the arbitration provision. *See* Buckley Decl. ¶ 12.

22 “Federal courts . . . have recognized the general enforceability of . . . online  
23 agreements that require affirmative user assent.” *In re Holl*, 925 F.3d 1076, 1085 (9th  
24 Cir. 2019) (citations omitted). Indeed, courts in the Ninth Circuit consistently find  
25 assent under circumstances materially identical to those alleged here. *See, e.g.*,  
26 *Wiseley v. Amazon.com, Inc.*, 709 F. App’x 862, 864 (9th Cir. 2017) (“The notices on  
27 Amazon’s checkout and account registration pages, which alerted Wiseley that  
28 clicking the corresponding action button constituted agreement to the hyperlinked

1 [Conditions of Use], were in sufficient proximity to give him a ‘reasonable  
2 opportunity to understand’ that he would be bound by additional terms.”); *Surkhabi*  
3 *v. Tesla, Inc.*, 2022 WL 19569540, at \*3 (C.D. Cal. Oct. 27, 2022) (“[Plaintiff] admits  
4 before clicking the ‘Place Order’ button, there is an option to click an underlined  
5 hyperlink labeled ‘Model X Order Agreement.’ . . . [Plaintiff] had sufficient  
6 opportunity to see and review the arbitration agreement. . . . Tesla cannot be faulted  
7 for [plaintiff’s] failure to read the document containing the arbitration clause when it  
8 was readily available.”); *Stout v. Grubhub*, 2021 WL 5758889, \*2 (N.D. Cal. Dec. 3,  
9 2021) (“When a customer creates an account with Grubhub (whether via the mobile  
10 app or the website), she is required to consent to its Terms of Use. . . . In addition,  
11 each time a customer places an order . . . a customer must agree to the Terms of Use.  
12 . . . Thus, the Terms of Use . . . apply.”).

13 Because there can be no dispute Millar agreed to arbitrate his claims against  
14 ExpressVPN, they must be sent to arbitration and this action should be stayed pending  
15 completion of any arbitration. *See* 9 U.S.C. § 3; *Prima Paint Corp.*, 388 U.S. at 400  
16 (explaining courts lack authority to address the merits of claims subject to arbitration);  
17 *Smith v. Spizzirri*, 601 U.S. 472, 478 (2024) (“When a district court finds that a lawsuit  
18 involves an arbitrable dispute, and a party requests a stay pending arbitration, § 3 of  
19 the FAA compels the court to stay the proceeding.”). Further, as shown below, Millar  
20 agreed to delegate arbitrability questions to the arbitrator. Accordingly, the FAA  
21 limits the Court’s role to determining whether a valid arbitration agreement exists  
22 between the parties. *See Chiron Corp. v. Ortho Diagnostic Sys. Inc.*, 207 F.3d 1126,  
23 1130 (9th Cir. 2000). If the answer is “yes”—and it is—the Court may go no further  
24 and must compel arbitration. *Id.*

25 **B. The Arbitration Agreement Delegates Arbitrability Disputes**

26 Millar’s arbitration agreement provides that “[a]ll disputes arising out of or  
27 relating to this Agreement or the use of the Site or Services shall be finally settled  
28 under the Rules of Arbitration (‘Rules’) of the International Centre for Dispute

1 Resolution (ICDR) by one arbitrator ('Arbitrator') appointed in accordance with said  
2 Rules." Buckley Decl., Ex. 2 § 15. These ICDR Rules empower the arbitrator to  
3 decide all threshold issues, including disputes related to the scope or validity of the  
4 arbitration agreement itself. Specifically, Article 21 of the ICDR Rules provides that,  
5 "[t]he arbitral tribunal shall have the power to rule on its own jurisdiction, including  
6 any objections with respect to arbitrability, to the existence, scope, or validity of the  
7 arbitration agreement(s), or with respect to whether all of the claims, counterclaims,  
8 and setoffs made in the arbitration may be determined in a single arbitration, without  
9 any need to refer such matters first to a court." ICDR, *Int'l Disp. Resol. Procedures*,  
10 Art. 21(1) (amended and effective March 1, 2021).

11 "Under federal law, the incorporation of a particular set of arbitration rules—  
12 such as the ICDR rules—that provide for the arbitrator to decide questions of  
13 arbitrability 'constitutes clear and unmistakable evidence that the contracting parties  
14 agreed to arbitrate arbitrability.'" *ASUS Computer Int'l v. InterDigital, Inc.*, 2015 WL  
15 5186462, at \*3 (N.D. Cal. Sept. 4, 2015) (citation omitted); *see also Patrick v.*  
16 *Running Warehouse, LLC*, 93 F.4th 468, 480–81 (9th Cir. 2024) ("Courts have found  
17 that parties clearly delegated arbitrability where they incorporated an arbitrator's  
18 arbitration rules in the agreement." (cleaned up)); *Rendon v. T-Mobile USA, Inc.*, 747  
19 F. Supp. 3d 1314, 1320 (C.D. Cal. 2024) ("[T]he incorporation of the AAA rules  
20 constitutes clear and unmistakable evidence Plaintiff agreed to arbitrate arbitrability,  
21 even if she was an unsophisticated party."). So, too, here.

22 Because the parties "clearly and unmistakably" agreed to delegate questions of  
23 arbitrability to the arbitrator, to the extent Millar raises challenges, for example, to the  
24 scope, enforceability, or validity of his agreement, those challenges must be submitted  
25 to, and decided by, the arbitrator.

26  
27  
28

## **CONCLUSION**

For the foregoing reasons, the Court should dismiss these proceedings for lack of jurisdiction or, in the alternative, compel it to arbitration.

DATED: August 22, 2025

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## **CERTIFICATE OF COMPLIANCE**

2 The undersigned, counsel of record for Defendant Express Technologies, Ltd.,  
3 certifies that this brief contains 6,908 words, which complies with the word limit of  
4 L.R. 11-6.1.

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